The appellant in this case was charged on three counts for offences contrary to s. 8(c) of the Exchange Control Ordinance, to wit, that he on or about specified dates did "without the permission of the Controller of Foreign Exchange, place to the credit of Chop Huat, Bangkok, Thailand, a firm resident outside the scheduled territories" three specified sums of local currency. He pleaded guilty to each of the three charges. The learned District Judge holding that para 1(4) by which a fine might be imposed of three times the value of the currency, etc., in certain circumstances, applied to the case, convicted and sentenced the appellant to pay fines of $77,670.00, $60,000.00 and $10,927.90 respectively on each charge, and in default of payment six months imprisonment on each charge to run consecutively.

The appellant appealed against sentence, contending that the maximum fine which could be imposed in each case, under the provisions of para 1 of Part II of the 5th Schedule to the Exchange Control Ordinance was $10,000.00, and that in all circumstances, the fines imposed were excessive.

Held: placing a sum to the credit of a person may constitute a payment but it may not according to the circumstances. If it was sought to contend that the transactions in this case constituted payments the appellant should have been charged under s. 8(a). As this was not done para 1(4) did not apply, and fine was reduced to $10,000 in each case.

MAGISTRATE'S APPEAL.

Dr. C. H. Withers-Payne (*L. Rayner* with him) for the appellant.

H. B. Livingstone (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Murray-Aynsley C.J. :—This is an appeal against sentence. The appellant was found guilty on his own confession of three offences against section 8(c) of the Exchange Control Ordinance, 1953, and was fined.

Section 8 reads as follows:—

"8. Except with the permission of the Controller, no person shall do any of the following things in the Colony, that is to say—

(a) make any payment to or for the credit of a person resident outside the scheduled territories: or

(b) make any payment to or for the credit of a person resident in the scheduled territories by order or on behalf of a person resident outside the scheduled territories; or

(c) place any sum to the credit of any person resident outside the scheduled territories:

Provided that where a person resident outside the scheduled territories has paid a sum in or towards the satisfaction of a debt due from him, paragraph (c) of this section shall not prohibit the acknowledgment or recording of the payment."

The penalties are set out in the Fifth Schedule Part II. By para. 1(2) the penalty is imprisonment for not more than two years or a fine not exceeding $10,000. But by para. 1(4) a fine may be imposed of three times the value of the currency, etc., in certain circumstances. These are where any person is convicted of an offence in relation to any currency, any security, and any payment, any gold, any goods or any other property. It is conceded that the relevant word in the present case is 'payment'.

It will be seen that (a) and (b) of section 8 deal with payments, (c) does not. Placing a sum to the credit of a person may constitute a payment but it may not according to the circumstances.

In spite of the heading to Part III of the Ordinance and in spite of the marginal note it is clear that the section includes other things besides payments.

If it was sought to contend that the present transactions constituted payments the appellant should have been charged under Section 8(a). This was not done and therefore para. 1(4) does not apply.

The fine is reduced to $10,000 in each case.

The alternative of six months imprisonment remains.

Order accordingly.

Solicitors for the appellant: *L. Rayner & Co.*

DEPUTY PUBLIC PROSECUTOR v. LIM PANG KIA

[A. Cr. J. (Murray-Aynsley C.J., Taylor & Knight JJ.) February 25, 1955]

[Singapore—Magistrate's Appeal No. 225 of 1954]

Exchange Control Ordinance, 1953—Controller—Powers of—Interpretation—Way of securing compliance.

The respondent in this appeal was charged with failure to comply with written directions given by the Ag. Deputy Controller of Foreign Exchange, in exercise of the powers conferred upon the Controller by para 1(1) of Part I of the 5th Schedule to the Exchange Control Ordinance, requiring him within 7 days of the receipt thereof to attend at the office of the Controller to give verbal information concerning certain transactions in gold and payments which might have been made in contravention of the provisions of the said Ordinance and concerning certain documents in connection therewith then in the possession of the Controller, and thereby committed an offence under para 1(1) Part II punishable under para 1(2) Part II of the said Schedule.

The respondent's only defence in the lower Court was that the notice was defective in form. The learned District Judge acquitting the respondent said that "the directions of the Controller should specify the information in the possession or control of the accused that the Controller required to be furnished. Otherwise how was one to know whether the Controller had exceeded his powers under para 1(1) Part I of the 5th Schedule of the Exchange Control Ordinance, 1953?"

On appeal by the Deputy Public Prosecutor,—

Held: (1) the interpretation by the learned District Judge involved adding something to the Schedule which has the effect of rendering it nugatory. If the Controller knew already he did not need to ask. As the notice followed the wording of the Schedule, it was in order; (2) although information could only be required to secure compliance with the regulations and to detect evasion, the powers of the Controller are not exhausted once the fact of an evasion had been discovered. The obtaining of evidence against persons guilty of offences

against the regulations was within the ambit of both these purposes. The only effective way of securing compliance with regulations was to prosecute those who did not comply.

Case referred to:—

(1) *Seow Tai Keng v. R.* (1953) M.L.J. 132 dissented from

MAGISTRATE'S APPEAL heard before a Court of three Judges.

G. S. Hill (Crown Counsel) for the appellant.

F. R. N. H. Massey for the respondent.

The judgment of the Court was delivered by:—

Murray-Aynsley C.J.: —This appeal raises a a question of the powers of the Controller of Foreign Exchange under the Fifth Schedule of Exchange Control Ordinance, 1953, (Part I para. 1(1)). Here a notice was issued to the respondent in the following form:—

"In exercise of the powers conferred upon me by Part I of the 5th Schedule to the Exchange Control Ordinance 1953 I hereby direct that you shall, within seven days of the receipt of this letter, attend at this office to give verbal information concerning certain transactions in gold and payments which may have been made in contravention of the provisions of the Exchange Control Ordinance 1953 and which are now being investigated and concerning certain documents in connection therewith now in the possession of the Controller, thereby completing the information already furnished by you on the 29th September, 1954."

The respondent did not attend as required by the notice. Proceedings were taken against him and the learned District Judge found that the notice did not comply with the requirements of the Ordinance and dismissed the charge. In his grounds of decision the learned District Judge said:—

"In my opinion the directions of the Controller should specify the information in the possession or control of the accused that the Controller required to be furnished. Otherwise how was one to know whether the Controller had exceeded his powers under paragraph 1(1) Part I of the 5th Schedule of the Exchange Control Ordinance 1953."

We think that this interpretation involves adding something to the Schedule which has the effect of rendering it nugatory. If the Controller knows already he does not need to ask. The notice followed the wording of the Schedule and is, in our opinion, in order.

During the hearing the case of *Seow Tai Keng v. R.*[1], was cited to us. We think that that decision has caused some confusion. It is true that information can only be required to secure compliance with the regulations and to detect evasion. We do not agree that when once the fact of an evasion has been discovered the powers of the Controller are exhausted. We think that the obtaining of evidence against persons guilty of offences against the regulations is within the ambit of both those purposes. The only effective way of securing compliance with regulations is to prosecute those who do not comply. We therefore disagree with the reasoning of the learned Judge in that case.

In the present case the only defence in the Court below was that the notice was defective in form.

In the circumstances we allowed the appeal of the Public Prosecutor, convicted the respondent and imposed a fine.

We observed that in the correspondence the Solicitor then acting for the respondent had made some observations which were both irrelevant and unprofessional and at the trial he cumbered the case with both oral and documentary evidence most of which was irrelevant in itself and inadmissible as obvious hearsay. Such conduct is strongly to be deprecated.

Appeal allowed.

Solicitors for the respondent: *Allen & Gledhill.*

MAHN SINGH & ORS. v. GUAN SOON TRANSPORT CO. LTD.

[O. C. J. (Murray-Aynsley C.J.) March 10, 1955]

[Singapore — Suit No. 1725 of 1953]

Contract — Specific performance — Agreement to purchase land at an auction — Defect of title not disclosed — Misrepresentation entitling the purchasers to rescind.

This was an action for specific performance. The defendants entered into a contract to purchase certain land in Katong, they having been the highest bidders in an auction and thereafter signed the usual memorandum and paid a deposit. They resisted this claim owing to the circumstances that many years before the then owner of the land in question and other land in the neighbourhood had submitted to the authorities a plan for development as the result of which the land in question was shown on the general improvement plan as an open space under s. 50(1)(g) of the Singapore Improvement Ordinance (Cap. 134), as a consequence of which, by virtue of s. 58(1) of the same Ordinance, it was not possible to use the land otherwise than as an open space without the permission of the Singapore Improvement Board.

The plaintiffs were fully aware of this state of affairs but there was no disclosure by them at the time of the sale. In fact before the sale the land was advertised as a "valuable freehold land". However the restriction could have been discovered by examination of the relevant plan which was open to public examination.

Held: the description "valuable freehold land" was, in the circumstances of the case, a misrepresentation entitling the purchasers to rescind, and they were entitled to judgment.

Cases referred to:—

(1) *Flight v. Booth* (1834), 1 Bing. N.C. 370.

(2) *Dykes v. Blake* 4 Bing. N.C. 463.